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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/749,762	12/31/2003	Keith A. Etling	038190/269125	9125
826	7590	05/31/2005	EXAMINER	
ALSTON & BIRD LLP BANK OF AMERICA PLAZA 101 SOUTH TRYON STREET, SUITE 4000 CHARLOTTE, NC 28280-4000			PICKARD, ALISON K	
		ART UNIT		PAPER NUMBER
				3676

DATE MAILED: 05/31/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/749,762	ETLING, KEITH A.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Alison K. Pickard	3676	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on \_\_\_\_\_.  
 2a) This action is **FINAL**.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-30 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-30 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
     1. Certified copies of the priority documents have been received.  
     2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
     3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
     Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
     Paper No(s)/Mail Date \_\_\_\_\_
- 5) Notice of Informal Patent Application (PTO-152)  
 6) Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Claim Objections***

1. Claims 23 and 24 are objected to because of the following informalities: claim 23, "the wear resistant fabric" lacks antecedent basis. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-5, 7, 9-13, 16-19, 21, 22, 25, and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by Procton (5,001,865).

Procton discloses an apparatus and method of sealing two surfaces 15 and 11 comprising a sealing member 14 and receiving aperture formed by engagement member 24 of 15 and 11. The sealing member has an attachment portion 18 fixed to surface 11 and a seal portion 20 having a deformable segment 22 made of elastomer sponge. The apparatus has a coating 21. The member is made of a pliable material such that the seal portion bends (see Fig. 1). The attachment portion is less pliable than the seal portion. In the method, the deformable segment will be deformed when removed from the aperture due to its resilient nature.

4. Claims 1, 3, 5-9, 11, 13-17, and 25-30 are rejected under 35 U.S.C. 102(b) as being anticipated by Hartkorn (4,773,791).

Hartkorn discloses an apparatus for and method of sealing two surfaces. An attachment portion 20 of a sealing member is fixed to a surface via rivet 50. A deformable segment 9 or 10,

which is carried by a seal portion 8, is positioned in an aperture defined by 40 or 20. An engagement member 40 (or other 20) is secured to one of the surfaces to define the aperture. The segment 9 or 10 is deformed when removed (see col. 2, lines 60-66). A coating (one of 61) is applied to the seal member after the engagement member is applied. The other 61 is a filler applied to an area in the aperture. Release material 4 is applied to a side of the sealing member facing the surface prior to positioning the deformable segment. A fastener (either of 40 or 20 or 41) is installed and aligned with the deformable segment prior to positioning of the segment in the aperture.

5. Claims 16-19 and 21-24 are rejected under 35 U.S.C. 102(b) as being anticipated by Kaplo (5,045,635).

Kaplo discloses a sealing member comprising a rigid attachment portion (see Figs. 3-5) and a pliant seal portion with a deformable segment 22. In figure 5, the seal portion has an angled end portion. The segment 22 is elastomer sponge. The seal member is covered with a wear resistant material, conductive scrim and conductive elastomer.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Procton. Procton does not appear to disclose the material of the attachment portion. However, it is not considered inventive to discover the workable or optimum ranges by routine

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experimentation. See *In re Aller*, 105 USPQ 233, 235 (CCPA 1955). Therefore, it would have been obvious for one of ordinary skill in the art at the time the invention was made to make the portion from aluminum or a composite.

***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Warshaw '976, for example, is relevant to at least claims 25-27 and 29.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alison K. Pickard whose telephone number is 571-272-7062. The examiner can normally be reached on M-F (10-7:30), with alternate Friday's off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather Shackelford can be reached on 571-272-7049. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Alison K. Pickard  
Primary Examiner  
Art Unit 3676

AP